



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2009-0710; FRL – 9789-4]

## Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Interstate Transport of Fine Particulate Matter

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a portion of a State Implementation Plan (SIP) submittal from the State of New Mexico to address Clean Air Act (CAA or Act) requirements in section 110(a)(2)(D)(i)(I) that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 2006 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). EPA proposes to determine that the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS (2006 PM<sub>2.5</sub> NAAQS) in any other state as required by section 110(a)(2)(D)(i)(I) of the Act.

**DATES:** Comments must be received on or before [Insert date 30 days from date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2009-0710, by one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.
- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2009-0710. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl Young, Air Planning Section (6PD-L), U.S. EPA Region 6, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means EPA.

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## **I. Background**

### *A. 2006 PM<sub>2.5</sub> NAAQS and Interstate Transport*

Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of New Mexico, EPA is addressing the first two elements of section 110(a)(2)(D)(i)(I) with respect to the 2006 PM<sub>2.5</sub> NAAQS.<sup>1</sup> The first element of section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

On June 12, 2009, the Governor of New Mexico submitted a letter and supporting documentation certifying that the New Mexico Environment Department (NMED) has evaluated the New Mexico SIP, and found that the existing SIP does satisfy all the requirements of section

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<sup>1</sup> This proposed action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. On January 22, 2013, we approved the SIP submittal for the element regarding interference with measures required to prevent significant deterioration of air quality for the 2006 PM<sub>2.5</sub> NAAQS (78 FR 4337). We will act on the element regarding protection of visibility in another state in a future separate rulemaking.

110(a)(2)(D)(i) for the 2006 PM<sub>2.5</sub> NAAQS and that no further revisions are necessary. The supporting documentation included a relevant technical analysis supporting New Mexico's conclusion as recommended by EPA's guidance memorandum that provides recommendations to states for making SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 PM<sub>2.5</sub> NAAQS ("2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance" or "Guidance").<sup>2</sup> A copy of New Mexico's submittal and supporting documentation can be found in the electronic docket for this action. In this proposed action, EPA is evaluating whether the June 12, 2009 submittal satisfies the interstate transport provisions of 110(a)(2)(D)(i) prohibiting emissions that adversely affect another state in the ways contemplated in the statute.

#### *B. EPA Rules Addressing Interstate Transport for the 2006 PM<sub>2.5</sub> NAAQS*

EPA has previously addressed the requirements of section 110(a)(2)(D)(i)(I) in past regulatory actions.<sup>3</sup> EPA published the final Cross-State Air Pollution Rule (Transport Rule) to address the first two elements of CAA section 110(a)(2)(D)(i)(I) in the eastern United States with respect to the 2006 PM<sub>2.5</sub> NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). The Transport Rule was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.<sup>4</sup> *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision to vacate the Transport Rule. *See EME Homer City Generation, L.P. v. E.P.A.*, 696

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<sup>2</sup> See Memorandum from William T. Harnett entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)," September 25, 2009, available at [http://www.epa.gov/ttn/caaa/t1/memoranda/20090925\\_harnett\\_pm25\\_sip\\_110a12.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf).

<sup>3</sup> See NO<sub>x</sub> SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

<sup>4</sup> CAIR addressed the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour PM<sub>2.5</sub> NAAQS. For more information on CAIR, please see our July 30, 2012 proposal for Arizona regarding interstate transport for the 2006 PM<sub>2.5</sub> NAAQS (77 FR 44551, 44552).

F.3d 7 (D.C. Cir. 2012). The court also ordered EPA to continue implementing CAIR in the interim. On January 24, 2013, the D.C. Circuit issued an order denying all petitions for rehearing. At this time, the deadline for asking the Supreme Court to review the *EME Homer City* decision has not passed and the United States has not yet decided whether to seek further appeal. In the meantime, and unless the *EME Homer City* decision is reversed or otherwise modified, EPA intends to act in accordance with the opinion in *EME Homer City*. New Mexico was not covered by either CAIR or the Transport Rule, and EPA made no determinations in either rule regarding whether emissions from sources in New Mexico significantly contribute to nonattainment or interfere with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in another state. Based on the technical information available at this time, with respect to the 2006 PM<sub>2.5</sub> NAAQS, the issues relating to transport of New Mexico's emissions are analytically different from the PM<sub>2.5</sub> pollution transport issues faced in the states addressed by CAIR and the Transport Rule. This position of analytical differences with respect to New Mexico and the 2006 PM<sub>2.5</sub> NAAQS, based upon information available at this time, relies in part to the more complex terrain in New Mexico and western states also not addressed by CAIR and the Transport Rule, and the greater distance between New Mexico emission sources and areas that have problems attaining and/or maintaining the 2006 PM<sub>2.5</sub> NAAQS. Additionally, based on the technical information available at this time, the areas of concern in the western U.S. for the 2006 PM<sub>2.5</sub> NAAQS that EPA analyzed for potential impact by emissions from sources in New Mexico are generally more locally driven than areas of concern addressed in the CAIR and Transport Rule. The methodology and analysis used for evaluating New Mexico's compliance with the interstate transport requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 PM<sub>2.5</sub> NAAQS is further explained in Section II of this proposed rulemaking.

*C. EPA Guidance for SIP Submissions to Address Interstate Transport for the 2006 PM<sub>2.5</sub> NAAQS*

On September 25, 2009, EPA issued a guidance memorandum that provides recommendations to states for making SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 PM<sub>2.5</sub> NAAQS (“2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance” or “Guidance”).<sup>5</sup> With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would contribute significantly to nonattainment of the NAAQS in any other state, the 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance essentially reiterated the recommendations for western states made by EPA in previous guidance addressing the 110(a)(2)(D)(i) requirements for the 1997 8-hour Ozone and 1997 PM<sub>2.5</sub> NAAQS.<sup>6</sup> The 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance advised states outside of the CAIR region to include in their section 110(a)(2)(D)(i)(I) SIP submissions an adequate technical analysis to support their conclusions regarding interstate pollution transport, *e.g.*, information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.<sup>7</sup> With respect to the requirement in section

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<sup>5</sup> See Memorandum from William T. Harnett entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS),” September 25, 2009, available at [http://www.epa.gov/ttn/caaa/t1/memoranda/20090925\\_harnett\\_pm25\\_sip\\_110a12.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf).

<sup>6</sup> See Memorandum from William T. Harnett entitled “Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” August 15, 2006, available at [http://www.epa.gov/ttn/caaa/t1/memoranda/section110a2di\\_sip\\_guidance.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/section110a2di_sip_guidance.pdf).

<sup>7</sup> The 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the court in the *North Carolina* case and that would provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour PM<sub>2.5</sub> NAAQS because the CAIR rule did not address this NAAQS. See 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance at 3.

110(a)(2)(D)(i)(I) to prohibit emissions that would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent and distinct requirement of the statute and provide technical information appropriate to support the State's conclusions, such as information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient concentrations in the state and in potentially impacted states, and air quality modeling. *See* footnotes 5 and 6.

In this action, EPA is maintaining the conceptual approach to evaluating interstate pollution transport under CAA section 110(a)(2)(D)(i)(I) that the Agency provided in the 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance. For the 2006 PM<sub>2.5</sub> NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are generally relatively local in nature with only limited impacts from interstate transport. EPA believes that the section 110(a)(2)(D)(i)(I) SIP submission from New Mexico may be evaluated using a "weight of the evidence" approach that takes into account available relevant information, such as that recommended by EPA in the 2006 PM<sub>2.5</sub> NAAQS Infrastructure Guidance. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a specific situation.



## II. EPA's Evaluation

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA must determine whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in downwind areas. If this factual finding is in the negative, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's SIP. Consistent with EPA's approach in the 1998 NO<sub>x</sub> SIP call, the 2005 CAIR, and the 2011 Transport Rule, EPA is evaluating these impacts with respect to specific monitors identified as having nonattainment and/or maintenance problems, which we refer to as "receptors." *See* footnote 3. EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate contributions to nonattainment or interference with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in another state.

This proposed approval addresses the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS in several ways. It takes into account the technical analysis contained in New Mexico's June 12, 2009 SIP submission, which explains the lack of PM<sub>2.5</sub> nonattainment areas in or within close proximity to the state reduce the likelihood that New Mexico's emissions contribute significantly to nonattainment or interfere with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in any downwind state. In addition, EPA has supplemented its evaluation of New Mexico's submittal with a review of the monitors in other states that are appropriate "nonattainment receptors" or "maintenance receptors," and additional technical information in considering whether sources in New Mexico contribute significantly to nonattainment or interfere with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in other states.

Our Technical Support Document (TSD) contains a more detailed evaluation and is available in the public docket for this rulemaking, which may be accessed online at

<http://www.regulations.gov>, Docket No. EPA-R06-OAR-2009-0710. We provide below a summary of our analysis.

#### *A. Identification of Nonattainment and Maintenance Receptors*

EPA evaluated data from existing monitors over three overlapping 3-year periods (i.e., 2006-2008, 2007-2009, and 2008-2010) to determine which areas were violating the 2006 PM<sub>2.5</sub> NAAQS and which areas might have difficulty maintaining attainment. If a monitoring site measured a violation of the 2006 PM<sub>2.5</sub> NAAQS during the most recent 3-year period (2008-2010), then this monitor location was evaluated for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i)(I). If, on the other hand, a monitoring site shows attainment of the 2006 PM<sub>2.5</sub> NAAQS during the most recent 3-year period (2008-2010) but a violation in at least one of the previous two 3-year periods (2006-2008 or 2007-2009), then this monitor location was evaluated for purposes of the interfere with maintenance element of the statute.

The western United States were not included in the CAIR and the Transport Rule analyses. The approach described above is similar to the approach utilized by EPA in promulgating the CAIR and the Transport Rule by identifying the areas/receptors of concern for use in evaluating interstate transport. By this method, EPA has identified those areas with monitors to be considered “nonattainment receptors” or “maintenance receptors” for evaluating whether the emissions from sources in another state could significantly contribute to nonattainment in, or interfere with maintenance in, that particular area.

#### *B. Evaluation of Significant Contribution to Nonattainment*

EPA reviewed the portion of the State of New Mexico's June 12, 2009 submission addressing 110(a)(2)(D)(i)(I) and corresponding technical analysis for the 2006 PM<sub>2.5</sub> NAAQS, with EPA's supplemental analysis and additional technical information to evaluate the potential for New Mexico emissions to contribute significantly to nonattainment of the 2006 PM<sub>2.5</sub> NAAQS at specified monitoring sites in the western United States.<sup>8</sup> EPA first identified as "nonattainment receptors" all monitoring sites in the western states that had recorded PM<sub>2.5</sub> design values above the level of the 2006 PM<sub>2.5</sub> NAAQS (35 µg/m<sup>3</sup>) during the years 2008-2010.<sup>9</sup> See Section III of the TSD for a more detailed description of EPA's methodology for selection of nonattainment receptors. Because geographic distance is a relevant factor in the assessment of potential pollution transport, (*See* footnotes 5 and 6), EPA initially focused its review on information related to potential transport of PM<sub>2.5</sub> pollution from New Mexico to potential nonattainment receptors in the states bordering New Mexico: Arizona, Utah, Colorado, Oklahoma, and Texas.<sup>10</sup> Of these bordering states, EPA identified only Utah as having a nonattainment receptor. As detailed in the TSD, EPA believes that the following factors support a finding that emissions from New Mexico do not significantly contribute to nonattainment of the 2006 PM<sub>2.5</sub> NAAQS in Utah: (1) technical information indicating that elevated PM<sub>2.5</sub> levels at nonattainment receptors are predominantly caused by local emission sources, (2) air quality data indicating that regional background levels of PM<sub>2.5</sub> are generally low during the time

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<sup>8</sup> EPA has also considered potential PM<sub>2.5</sub> transport from New Mexico to the nearest nonattainment and maintenance receptors located in the eastern, midwestern and southern states covered by the Transport Rule and believes it is reasonable to conclude that, given the significant distance from New Mexico to the nearest such receptor (in Illinois) and the relatively insignificant amount of emissions from New Mexico that could potentially be transported such a distance, emissions from New Mexico sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS at this location. These same factors also support a finding that emissions from New Mexico sources neither contribute significantly to nonattainment nor interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS at any location further east. *See* TSD at Section I.B.3.

<sup>9</sup> Because CAIR did not cover states in the western United States, these data are not significantly impacted by the remanded CAIR at the time and thus could be considered in this analysis. In contrast, recent air quality data in the eastern, midwestern and southern states are significantly impacted by reductions associated with CAIR.

<sup>10</sup> EPA did not identify any nonattainment receptors in Arizona, Oklahoma, Texas, or Colorado.

periods of elevated PM<sub>2.5</sub> at these receptors, (3) the distance to the receptor in the northwest quadrant of Utah, and (4) the presence of significant terrain, which creates a physical impediment to pollution transport.

EPA also evaluated potential PM<sub>2.5</sub> transport to potential nonattainment receptors in the more distant western states of California, Nevada, Oregon, Washington, Idaho, Wyoming, and Montana.<sup>11</sup> EPA believes that the following factors support a finding that emissions from New Mexico do not significantly contribute to nonattainment of the 2006 PM<sub>2.5</sub> NAAQS in any of these states (excluding California): (1) the significant distance from the State of New Mexico to the nonattainment receptors in these states, (2) technical information indicating that elevated PM<sub>2.5</sub> levels at nonattainment receptors in these states are predominantly caused by local emission sources, (3) air quality data indicating that regional background levels of PM<sub>2.5</sub> are generally low during the time periods of elevated PM<sub>2.5</sub> at these receptors, and (4) the presence of significant terrain, which creates a physical impediment to pollution transport. With respect to California, technical information indicating that elevated PM<sub>2.5</sub> levels at the nonattainment receptors are predominantly caused by local emission sources and that the dominant air flows across California are from the west to the east support a finding that emissions from the state of New Mexico do not significantly contribute to nonattainment of the 2006 PM<sub>2.5</sub> standards in California.

Based on evaluation of New Mexico's technical analysis for the 2006 PM<sub>2.5</sub> NAAQS, with EPA's supplemental analysis and additional technical information, EPA proposes to conclude that emissions from sources in the State of New Mexico do not significantly contribute to nonattainment of the 2006 PM<sub>2.5</sub> NAAQS in any other state and that CAA section 110(a)(2)(D)(i)(I) therefore does not require New Mexico to adopt additional controls and submit

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<sup>11</sup> Of these more distant seven states, EPA did not identify any nonattainment receptors in Wyoming.

them to EPA for approval as part of the New Mexico SIP for purposes of implementing the 2006 PM<sub>2.5</sub> NAAQS.

### *C. Evaluation of Interference with Maintenance*

EPA reviewed the portion of the State of New Mexico's June 12, 2009 submission addressing 110(a)(2)(D)(i)(I) and corresponding technical analysis for the 2006 PM<sub>2.5</sub> NAAQS, with EPA's supplemental analysis and additional technical information to evaluate the potential for New Mexico emissions to interfere with maintenance of the 2006 PM<sub>2.5</sub> standards at specified monitoring sites in the western United States. EPA first identified as "maintenance receptors" all monitoring sites in the western states that had recorded PM<sub>2.5</sub> design values above the level of the 2006 PM<sub>2.5</sub> NAAQS (35 µg/m<sup>3</sup>) during the 2006-2008 and/or 2007-2009 periods but below this standard during the 2008-2010 period. See section IV of the TSD for more information regarding EPA's methodology for selection of maintenance receptors. All of the maintenance receptors in the western states are located in California, Utah, and Arizona. EPA therefore evaluated the potential for transport of New Mexico emissions to the maintenance receptors located in Arizona, California, and Utah. As detailed in the TSD, EPA believes that the following factors support a finding that emissions from sources in the State of New Mexico do not interfere with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in Arizona and Utah: (1) the significant distance from the State of New Mexico and the sources of New Mexico's PM<sub>2.5</sub> pollution to the maintenance receptors in these states, (2) technical information indicating that elevated PM<sub>2.5</sub> levels at maintenance receptors in these states are predominantly caused by local emission sources, (3) air quality data indicating that regional background levels of PM<sub>2.5</sub> are generally low during the time periods of elevated PM<sub>2.5</sub> at these receptors, and (4) the presence

of significant terrain, which creates a physical impediment to pollution transport. With respect to California, technical information indicating that elevated PM<sub>2.5</sub> levels at the maintenance receptors are predominantly caused by local emission sources and that the dominant air flows across California are from the west to the east support a finding that emissions from sources in the state of New Mexico do not interfere with maintenance of the 2006 PM<sub>2.5</sub> standards in California.

Based on this evaluation of New Mexico's corresponding technical analysis for the 2006 PM<sub>2.5</sub> NAAQS, with EPA's supplemental analysis and additional technical information, EPA proposes to conclude that emissions from sources in the State of New Mexico do not interfere with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in any other state and that CAA section 110(a)(2)(D)(i)(I) therefore does not require New Mexico to adopt additional controls and submit them to EPA for approval as part of the New Mexico SIP for purposes of implementing the 2006 PM<sub>2.5</sub> NAAQS.

#### *D. Section 110(l) of the Act*

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The June 12, 2009 SIP submittal from the State of New Mexico contains no new regulatory provisions and does not affect any requirement in New Mexico's applicable implementation plan. Therefore, the submission does not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. EPA has concluded, based on New Mexico's technical analysis for the 2006 PM<sub>2.5</sub> NAAQS, and EPA's additional analysis and technical information,

that the existing SIP for the State of New Mexico is sufficient to meet the requirements of 110(a)(2)(D)(i)(I).

### **III. Proposed Action**

We are proposing to approve a portion of a SIP submittal for the State of New Mexico submitted by the Governor on June 12, 2009, to address interstate transport for the 2006 PM<sub>2.5</sub> NAAQS. Based on EPA's evaluation of the State's technical analysis addressing the requirements of CAA section 110(a)(2)(D)(i) for the 2006 PM<sub>2.5</sub> NAAQS, with EPA's additional analysis and technical information, we propose to approve the portion of the SIP submittal determining the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 2006 PM<sub>2.5</sub> NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.



List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 25, 2013.

**Ron Curry,**

*Regional Administrator, Region 6.*

*[FR Doc. 2013-05663 Filed 03/11/2013 at 8:45 am; Publication Date: 03/12/2013]*